

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Nicholas C. Nicolaides et al.

Application No.: 10/813,502

Filed: March 30, 2004

For: A Method for Generating Genetically Altered Antigens

Confirmation No.: 5311

Group Art Unit: 1633

Examiner: Ileana Popa

Director of the U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION TO WITHDRAW TERMINAL DISCLAIMER
UNDER 37 CFR §1.182**

Applicants filed a terminal disclaimer over U.S. Patent No. 6,825,038 in connection with the present application in response to an obviousness-type double patenting rejection. Applicants realized subsequent to filing of the terminal disclaimer over U.S. Patent No. 6,825,038 that it had been erroneously filed because the patent and the present application are not commonly owned.

MPEP § 1490 provides that, “while the filing and recordation of an unnecessary terminal disclaimer has been characterized as an ‘un-happy circumstance’ in *In re Jentoft*, 392 F.2d 633, 157 USPQ 363 (CCPA 1968), there is no statutory prohibition against nullifying or otherwise canceling the effect of a recorded terminal disclaimer which was erroneously filed before the patent issues. Since the terminal disclaimer would not take effect until the patent is granted, and the public has not had the opportunity to rely on the terminal disclaimer, relief from this unhappy circumstance may be available by way of petition or by refiling the application (other than by refiling it as a CPA). Under appropriate circumstances, consistent with the orderly administration of the examination process, the nullification of a recorded terminal disclaimer may be addressed by filing a petition under 37 CFR 1.182 requesting withdrawal of the recorded terminal disclaimer.”

Applicants respectfully request withdrawal of the terminal disclaimer over U.S. Patent No. 6,825,038 filed in connection with the present application.

Please charge the petition fee under 37 CFR 1.17(f) to Deposit Account No. 23-3050.

The Commissioner is hereby authorized to charge any underpayment or credit any overpayment of the fees associated with this petition to Deposit Account No. 23-3050.

Date: May 9, 2008

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